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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

EDWARD STAIN,

Defendant.

Case No. 2:02-cr-00201-LRH-NJK

ORDER

Before the Court is Defendant Edward Stain’s (“Stain”) motion for an order reducing sentence or modifying judgment under 18 U.S.C. § 3582(c)(1)(A)(i) (ECF No. 420). The government filed an opposition (ECF No. 421), to which Stain replied (ECF No. 422). Stain also provided the Court a supplement to his original motion following the Ninth Circuit’s very recent decision in *United States v. Aruda*, __ F.3d __, No. 20-10245, 2021 WL 1307884 (9th Cir. Apr. 8, 2021) (ECF No. 423).

For the reasons contained in this Order, the Court denies the motion.

I. BACKGROUND

In 2002, Stain planned and executed three armed robberies around the Las Vegas area. After a jury convicted him, this Court sentenced Stain to a total term of 535 months’ imprisonment. ECF No. 234. Of relevance to this Order, the majority of Stain’s sentence is comprised of two consecutive, mandatory sentences—seven years and twenty-five years—relating to two counts under 18 U.S.C. § 924(c) (Possession of a Firearm and During and in Relation to a Crime of

1 Violence). ECF No. 275. Stain appealed, and the Ninth Circuit affirmed his sentence. ECF No.
2 272. In 2016, Stain filed a § 2255 motion, which this Court denied and is currently being appealed
3 before the Ninth Circuit. ECF Nos. 397, 404, 405.¹ Stain now seeks to separately modify his
4 sentence because of statutory changes related to § 924(c). ECF No. 420.

5 **II. LEGAL STANDARD**

6 Under 18 U.S.C. § 3582(c), "the court may not modify a term of imprisonment once it has
7 been imposed," except under specified conditions. For a motion brought under § 3582(c)(1)(A)(i),
8 those specified conditions include the exhaustion of administrative remedies or the Bureau of
9 Prison's inaction for thirty days. The Court finds that Stain has exhausted the administrative
10 remedies available.

11 18 U.S.C. § 3582(c)(1)(A) provides:

12 [T]he court, . . . may reduce the term of imprisonment (and may impose a term of
13 probation or supervised release with or without conditions that does not exceed the
14 unserved portion of the original term of imprisonment), after considering the factors
set forth in section 3553(a) to the extent that they are applicable, if it finds that –

15 (i) extraordinary and compelling reasons warrant such a reduction; or

16 (ii) the defendant is at least 70 years of age, has served at least 30 years in prison,
pursuant to a sentence imposed under section 3559(c), for the offense or offenses,
17 for which the defendant is currently imprisoned, and a determination has been made
by the Director of the Bureau of Prisons that the defendant is not a danger to the
18 safety of any other person or the community, as provided under section 3142(g);

19 and that such a reduction is consistent with applicable policy statements issued by
the Sentencing Commission[.]

20 The relevant United States Sentencing Guidelines policy statement provides that the Court
21 may reduce a term of imprisonment if the Court determines that:

22 (1) (A) extraordinary and compelling reasons warrant the reduction; or

23 (B) the defendant (i) is at least 70 years old; and (ii) has served at least 30
24 years in prison pursuant to a sentence imposed under 18 U.S.C. 3559(c) for
the offense or offenses for which the defendant is imprisoned;

25 (2) the defendant is not a danger to the safety of any other person or to the
26 community, as provided in 18 U.S.C. 3142(g); and

27 (3) the reduction is consistent with this policy statement.

28 ¹ Notwithstanding the pending appeal, the Court will exercise its discretion and will still consider Stain's present
motion.

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2 U.S. SENTENCING GUIDELINES MANUAL § 1B1.13 (U.S. SENTENCING COMM’N 2018).
3 Extraordinary and compelling reasons include (1) the medical condition of the defendant, (2) the
4 age of the defendant, (3) family circumstances, or (4) any other extraordinary or compelling
5 reason, as determined by the Director of the Bureau of Prisons. *Id.* § 1B1.13 app. n.1.

6 The Court, in ruling upon a motion for reducing sentence or modifying judgment, may
7 reduce an imposed sentence if it determines that “extraordinary and compelling reasons warrant
8 such a reduction.” In addition to this finding, the Court must also consider the sentencing factors
9 described in 18 U.S.C. § 3553(a) to the extent that they are applicable and decide if a sentence
10 reduction would be “consistent with applicable policy statements issued by the Sentencing
11 Commission.” 18 U.S.C. § 3582(c)(1)(A).

12 **II. DISCUSSION**

13 At Stain’s original sentencing date, § 924(c) required a seven-year sentence for the first
14 conviction, and a twenty-five-year consecutive sentence for each subsequent § 924(c) conviction.
15 Stain’s second § 924(c) count was considered a “subsequent” conviction, and thus the Court
16 sentenced Stain to a mandated thirty-two years (seven and twenty-five) of consecutive
17 imprisonment in addition to his non-§ 924(c) sentences. This totaled 535 months.

18 In 2018, Congress passed the First Step Act, which amended § 924(c).² Specifically, it
19 provided that the twenty-five-year consecutive sentence for a second § 924(c) offense only applies
20 to a defendant who has had a § 924(c) conviction from another case. Meaning, an individual
21 charged and convicted with two, simultaneous § 924(c) counts today would face fourteen years
22 (seven and seven) instead of thirty-two years (seven and twenty-five). Thus, Stain, if sentenced
23 today, would face 319 months imprisonment instead of 535 months after including his non-§
24 924(c) sentences in the calculation. The Act did not make this change retroactively applicable.
25 Still, Stain maintains that this change in law, and the disparate sentencing outcomes, constitute an
26 extraordinary and compelling circumstance warranting a reduction in his sentence.

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28 ² First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018).

1 The Court finds, in this case, that a nonretroactive change in law does not amount to an
2 extraordinary and compelling reason for a sentence modification. *See United States v. Andrews*,
3 No. 3:93-CR-75-HDM, 2020 WL 7714708, at *3 (D. Nev. Dec. 29, 2020) (finding the same). The
4 Court is informed by the Sentencing Commission’s lack of guidance as to whether the length of a
5 previously imposed sentence constitutes an extraordinary or compelling reason warranting a
6 release. The Sentencing Commission’s agreed upon extraordinary and compelling reasons, listed
7 in § 1B1.13, do not include nonretroactive changes in sentencing laws. And while the Court is not
8 bound to the Sentencing Commission’s guidance, *see United States v. Aruda*, __ F.3d __, No. 20-
9 10245, 2021 WL 1307884 (9th Cir. Apr. 8, 2021), the Court still finds it significant that the
10 Sentencing Commission does not list post-sentencing changes in law as an extraordinary and
11 compelling reason warranting a reduction in a sentence. *See United States v. Saldana*, 807 Fed.
12 App’x 816, 820 (10th Cir. 2020) (“[N]either the § 1B1.13 commentary nor BOP Program
13 Statement 5050.50 identify post-sentencing developments in case law as an ‘extraordinary and
14 compelling reason’ warranting a sentence reduction.”) The Court is wary of identifying and
15 expanding what constitutes an “extraordinary” circumstance. Therefore, the Court, in its
16 discretion, finds that extraordinary and compelling reasons do not exist in this case.

17 Moreover, even if the Court were to consider a post-sentencing change in law as an
18 extraordinary and compelling reason warranting a reduction in a sentence, the section 3553(a)
19 factors outweigh modification. Stain’s crimes were serious. Armed robbery, in addition to the
20 potential of serious bodily injury or death, can cause lasting emotional stress and psychological
21 damage through assault and property destruction. As such, the Court is concerned that a reduction
22 of sentence would present a danger to the community.

23 Therefore, because Stain has not presented extraordinary and compelling reasons
24 warranting a modified sentence, and the 3353(a) factors do not warrant modification, the Court
25 will deny his motion. The Court finds that Stain should serve the full sentence imposed against
26 him to reflect the seriousness of his offense, to promote respect for the law, and to provide just
27 punishment for his offenses committed.

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IT IS THEREFORE ORDERED that Stain's motion for order reducing sentence or

IT IS SO ORDERED.

DATED this 13th day of May, 2021.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE